

MARY C. SCOTT

IBLA 98-446

Decided September 15, 1999

Appeal from a Decision Record and Finding of No Significant Impact issued by the Field Manager, Redding Field Office, Bureau of Land Management, approving the granting of a right-of-way. CA 39604.

Affirmed.

1. Environmental Quality: Environmental Statements--
Rights-of-Way: Generally--Rights-of-Way:
Applications--Rights-of-Way: Federal Land Policy and
Management Act of 1976

A BLM decision to grant a right-of-way for an electric transmission line on Federal land, which is based on an environmental assessment and a finding of no significant impact, will be affirmed on appeal when supported by a reasoned analysis of all relevant factors, the decision was made with due regard for the public interest, and sufficient reasons for disturbing the decision have not been shown.

APPEARANCES: Mary C. Scott, Redding, California, pro se; John R. Payne, Assistant Regional Solicitor, U.S. Department of the Interior, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE TERRY

Mary C. Scott (appellant) has appealed the July 16, 1998, Decision Record and Finding of No Significant Impact (DR/FONSI) issued by the Field Manager, Redding Field Office, Redding, California, Bureau of Land Management (BLM or respondent), approving the granting of right-of-way (ROW) CA 39604, which would add a third electric transmission line along an existing ROW, partially on Federal lands managed by BLM, to serve the needs of the Knauf fiberglass manufacturing facility (Knauf Project) and to supply future development needs called for by the General Plan of the City of Shasta Lake (City). BLM based its DR/FONSI on Environmental Assessment (EA) RE-98-13, which evaluated the impacts of granting the ROW. On the same day, BLM granted ROW CA 39604.

Prior to 1997, the City obtained its electrical power from the Western Area Power Administration (WAPA) through a single line service, which was often unreliable and clearly inadequate. (EA at 2.) For this reason, the City applied to BLM for a ROW on Federal land that it would need to develop a second transmission line, a substation, and an access road to service the line. BLM granted the ROW for the substation and access road on September 9, 1996. Id. During the time BLM was processing these requests, a proposal by Knauf Fiber Glass GmbH (Knauf) to construct a fiber glass manufacturing facility was being considered by the City. The Knauf proposal, as well as other projected City needs, warranted a third line on the ROW proposed for the second transmission line, and the City amended its application to BLM on March 28, 1997, to add the ROW needed for the third line to its application. Id.

BLM approved the ROW for the second and third lines on August 14, 1997 (CA 37034). Id. at 3. A challenge to this decision was subsequently filed in Federal court on December 8, 1997. BLM settled this case by agreeing to rescind the ROW for the third line and renotice the EA before reapproving the ROW for that line. Id. The EA was renoticed, comments considered, and the EA and FONSI prepared. On July 16, 1998, BLM issued the DR/FONSI. This appeal followed.

In her Statement of Reasons (SOR) for appeal, appellant claims the ROW is an integral part of the Knauf Project and that the entire project must be analyzed in an environmental impact statement (EIS). She states, in pertinent part:

Considering that the transmission line is part of the Knauf project, a finding of no significant impact can not be issued. The Knauf EIR [City's Final Environmental Impact Report, dated October 1987] already determined that there are several significant adverse impacts of the project, including air quality, noise, and aesthetics. This EA wrongly states that these impacts were not deemed significant, but they were in fact listed as significant, adverse, even with mitigation, in the EIR. Additionally, this current EA under appeal concludes that there will be a negative economic impact on landowners adjacent to the transmission line due to [a] decrease in property values (I happen to be one of the adjacent landowners). The value of the land on which the proposed ROW sits will also be decreased, which is a cost to the public that has not been discussed (I mentioned this in my comments to the initial EA and it was not addressed).

(SOR at 1-2.)

Appellant further claims:

The Knauf project is under the jurisdiction of the BLM, the Army Corps of Engineers[,] the Bureau of Reclamation, the

U.S. Fish and Wildlife Service, Forest Service, Park Service, and the Environmental Protection Agency. This is a classic case of a "federal" project, and all the above federal agencies must combine their input into a single EIS instead of disjoining it as has been done so far.

(SOR at 2.) She claims that since this action will be highly controversial, and with other related actions, will have cumulatively significant impacts, a more complete environmental review is required. (SOR at 2.)

In its Answer, BLM states that the transmission line ROW which is the subject of this appeal is a 115 kV power line which, for the most part, would parallel an existing transmission line. (Answer at 2; EA at 6-7.) The total length of the third line is 3.7 miles, but the portion that crosses BLM land is 5,600 feet, or a little more than a mile. The ROW for the third line is 100 feet in width, and the third line would be capable of carrying 50 megawatts of electricity. (Answer at 2.) Only a small portion of the total electric capacity of the third line would be used by the Knauf facility, with the great majority programmed for planned development in the City. Id.

BLM notes that the EA and proposed FONSI were issued for public comment on May 12, 1998, and that the comment period was extended from June 11, 1998, until June 29, 1998. (Answer at 3.) A public hearing was held on June 18, 1998. Id.

In response to appellant's specific allegations, BLM first addresses appellant's charge that the transmission line is part of the Knauf Project, and therefore an EIS including the entire Knauf Project is required, by quoting from the EA, where it stated:

Because the impacts of the Third Line are discussed in the Knauf Project EIR and because the federal government's involvement in the Knauf Project is limited to granting a section of ROW over BLM land, this act of granting the ROW does not "federalize" the Knauf project. (See California Trout v. Schaefer (9th Cir. 1995) 58 F.3d 469; Sylvester v. Army Corps of Engineers (9th Cir. 1989) 884 F.2d 394.[])

(Answer at 3, quoting EA at 6.) Respondent further stated in the EA:

BLM carefully considered this issue prior to preparing the EA and concluded that the EA should analyze only direct impacts of the Third Line on BLM land. The City already analyzed the impacts of the Knauf Project in an environmental impact report. (See Sylvester v. U.S. Army Corps of Engineers (9th Cir. 1989) 884 F. 2d 394, 401).

(Answer at 4, quoting EA at 17-18.)

BLM urges in its Answer that even if the Knauf plant could not operate without the third line, an analysis of the degree of discretion exercised by Knauf over the Federal portion, the level of financial aid provided by the Federal Government, and the overall Federal involvement in the action do not indicate a project-wide environmental analysis is required. (Answer at 4.) Because BLM is not providing any funding for the power line or the Knauf Project, because BLM did not have approval authority over the power line itself, and because BLM's overall involvement is limited to a relatively small portion of the power transmission line needed for the plant, respondent argues that this should not be deemed sufficient to "federalize" the Knauf Project. (Answer at 4.)

Respondent states that with regard to an analysis of the impacts of the Knauf Project, BLM relied on the fact that the City had already conducted an extensive environmental review of the Knauf Project. (Answer at 5; EA at 6.) BLM argues that courts have indicated that Federal agencies need not duplicate State environmental analyses. (Answer at 5, citing Laguna Greenbelt, Inc. v. U.S. Dept. Of Transportation, 42 F.3d 517, 524 n.6 (9th Cir. 1994); Sylvester v. U.S. Army Corps of Engineers, 884 F.2d at 401.) BLM addressed the State environmental analysis at page 5-6 of the EA.

In response to appellant's claim that participation by other Federal agencies requires preparation of an EIS, BLM asserts that appellant nowhere alleges the extent of the involvement of these agencies, and thus fails to meet her burden of proof. (Answer at 5.) In any event, BLM claims, BLM is unaware of any involvement of the Forest Service or the Park Service other than as commenting agencies on the EIR on the Knauf Project. Id. Respondent states the only Environmental Protection Agency involvement was in reviewing an appeal of a State-issued air quality permit for the Knauf Project. Id. BLM further explains that the Bureau of Reclamation was involved in a proposal to provide water to the Knauf facility, but that this proposal was withdrawn. Id. BLM states that Fish and Wildlife Service involvement related only to consultation pursuant to the Endangered Species Act. Id. Finally, BLM claims, the Army Corps of Engineers' only involvement was in issuing a permit allowing Knauf to fill approximately 2.28 acres of wetlands and creek channels on the 99 acre site. Id. Thus, respondent asserts, the combined Federal involvement does not "Federalize" the project. (Answer at 6.)

In addressing appellant's argument that the EA/FONSI are insufficient, BLM contends that her argument that the ROW will have significant impact in seven different areas is made with no support provided whatsoever. (Answer at 6.) The seven areas which she identified, BLM claims, were discussed directly in the EA, or by reference in the 1994 EA for the second transmission line, a nearly identical ROW proposal. Id., citing EA at 4-5. That 1994 analysis was attached to the EA. Similarly, respondent claims that appellant's argument that this is a "major" transmission line requiring an EIS is not correct, if BLM has properly determined that the impacts of the power line are not significant, as is the case here. (Answer at 6.) Appellant also urges that the controversy over the project mandates an EIS. BLM states, however, that the public review process

for the EA, which included a public comment period and a public hearing, provided ample opportunity for those with opposing views to have them considered. Id.

Finally, BLM states that appellant's claim that the analysis of alternatives was inadequate fails to consider the 1994 analysis incorporated into the present analysis as Attachment 6.0 and more importantly, fails to state how the 1994 analysis is deficient. (Answer at 6.)

Our review of the decisional process undertaken by BLM in developing the EA convinces us that BLM took the required "hard look" before determining that the requested ROW would create no significant environmental impact. In order to consider the environmental consequences of the proposed ROW on Federal land, BLM prepared an EA pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. § 4332(2)(C) (1994). On July 16, 1998, the Field Manager, Redding Field Office, BLM, granted the ROW based on the EA and the FONSI. We find appellant's challenge to that process to be without merit.

Section 501(a)(4) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761(a)(4) (1994), grants the Secretary of the Interior authority to issue rights-of-way on public lands for generation, transmission, and distribution of electric energy. See also 43 U.S.C. § 1761(a)(7) (1994). Approval of rights-of-way, and the EA predicate thereto, is, generally, a matter of Departmental discretion. Platronics Communications, 142 IBLA 156, 157 (1998); John M. Stout, 133 IBLA 321, 327-28 (1995), and cases cited. Such cases are evaluated to determine if the BLM decision is reasonable. Id. One seeking to show error in a decision upon which the grant of a ROW rests must show by a preponderance of the evidence that the agency decision is unreasonable. Stewart Hayduk, 133 IBLA 346, 354 (1995).

In compiling the EA and FONSI approved for the requested ROW for the third line, BLM examined several applicable alternatives from its 1994 review of the contiguous transmission line (second City transmission line). The proposed alternative, as in 1994, calls for construction of a 3.7-mile 115kV transmission line from WAPA's Shasta-Keswick 230kV with 5,600 feet of the route crossing BLM lands and paralleling the second transmission line addressed in the 1994 EIR. Within the preferred alternative, Knauf would fund the 115kV transmission line facilities required for direct connection to WAPA, and the City would own and operate the transmission line. The total land implicated in the project would be between 40 and 44 acres. (EA, Attachment (Att.) 6.0 at 9.)

The no action alternative would dictate that the City continue with only two connections to the WAPA system and with no capability to increase power supply capacity. No action would result in City transmission supply capacity limitations with respect to the Knauf plant and projected future City needs. It is not considered a viable alternative for meeting the stated need. (EA, Att. 6.0 at 7.)

Two other alternatives considered but rejected included the City of Redding Direct Interconnection and the Pacific Gas and Electric Company Direct Interconnection. Each of these was rejected because it did not comport with the 1986 Electric Master Plan developed by the City. (EA, Att. 6.0 at 7-8.)

Finally, the City, in conjunction with WAPA, also considered rewinding or replacing the Keswick transformers on the first of the City's lines. Neither of these alternatives was ultimately considered acceptable because it would not provide for future power beyond an additional 50 MVA. (EA, Att. 6.0 at 8.)

BLM's 1994 environmental review and the subsequent additional analysis to assess direct impacts of the third line and cumulative impacts of the second and third lines resulted in an examination of the affected environment in great detail. Affected resources were carefully considered. For example, primary impacts to soils associated with the proposed action include ROW clearing, structure hole excavation, and development and maintenance of access roads. It was determined that soil disturbing activities along the ROW will be short term and can be minimized by efficient construction methods, thereby reducing vehicular traffic. (EA, Att. 6.0 at 22.) Since there is very little gradation of slope along the transmission line route, there will be little erosional threat as a result of construction activities. Id. The EA found that the inherent productivity of the area soils will allow rapid re-establishment of native vegetation. Id.

The surface water/groundwater analysis found that potential impacts can be avoided by ensuring that transmission poles are not located within floodplain areas. The EA notes that all creeks within the project area are easily spanned by the transmission line. Transmission poles and access roads (except at creek crossings) would not be located on creek banks where bank failure may occur, thereby causing damage to the facility and increasing the sediment load of the creek. Transmission poles will be located at least 50 feet away from all ephemeral drainages. (EA at 11; EA, Att. 6.0 at 24.)

With regard to flora, previous investigations identified 96 special-status plant species that were known or expected to occur in the area of the third transmission line. (EA at 7.) Of these species, the EA determined that only 16 could potentially occur along the 200-foot ROW created for the second and third lines. Id. May Consulting Services, Inc., in a 1997 examination of the ROW corridor, did not observe any special-status plant species in the ROW corridor. The 1994 EIR reported consultation with the California Natural Diversity Database, the California Department of Fish and Game, and the U.S. Fish and Wildlife Service, who indicated that there are no State or Federally listed threatened or endangered species of flora or fauna found within the immediate project area. (EA, Att. 6.0 at 27.) Moreover, the 1994 report found that vegetation clearing along the transmission line route would create a new, more diverse habitat that would promote greater plant species diversity, and would result in increased numbers of plants in different growth stages. Id.

Impacts on fauna would likewise be temporary and the EA projected that no special-status wildlife would be adversely affected. (EA at 12.) The Draft Knauf Project EIR, also incorporated by reference into the EA, and included as Attachment 2, concluded that the cumulative impact on sensitive wildlife and fish habitat would be less than significant. Likewise, the 1994 EIR noted that the habitat edge created by the ROW would likely result in the creation of suitable habitat for such protected species as the northern harrier, Swainsen's hawk, burrowing owl, savannah sparrow, and California vole. (EA, Att. 6.0 at 29.)

The EA found that the proposed project would have no long term deleterious effect on air quality; however, during construction some short term increase in dust and particulate emissions may be experienced. (EA at 13.) The Draft Knauf Project EIR likewise concludes that the cumulative impact on air quality from particulate emissions would be less than significant because of the implementation of measures required by the Shasta County Air Quality Attainment Plan. (EA, Att. 2 at 4-218 to 4-219.) Similarly, the 1994 EIR states that mitigation will call for the construction contractor to provide water trucks or other dust abatement measures in areas along dirt roads where fugitive dust may be a problem. (EA, Att. 6.0 at 32.)

With regard to noise, the EA reports that the City would minimize noise impacts by requiring that construction and maintenance activities related to the third line be performed during daylight hours (except in remote areas and in emergencies) and by using fixtures large enough to eliminate noise from flowing electricity. (EA at 13.)

Visual resources were also considered. The EA notes that visual impacts from construction of the third line would be minimized by placing support poles adjacent to the support poles in the second line, which will be located in areas less visible from key vantage points. The 1994 EIR stated further that the 200-foot ROW avoids scenic viewsheds or areas where the line would be a prominent skyline element and that the wood pole structures would be placed to take advantage of vegetation backdrops or terrain features such as hills to further screen the crossing from view. (EA, Att. 6.0 at 40.)

A cultural resources inventory was conducted in the proposed project corridor, and the Draft Knauf Project EIR concludes that the impact would be less than significant. (EA, Att. 2 at 4-221.) Nevertheless, the EA reports that the City will allow construction to proceed only under the supervision of a qualified archaeologist. (EA at 14.) The 1994 EIR determined that four currently recorded archaeological sites and two unrecorded sites were found within the project area. These are primarily areas of historic mining interest. The transmission route will avoid each of these sites, regardless of apparent archaeological significance. (EA, Att. 6.0 at 41.) In the event an archaeological site or any historical remains are discovered during construction activities, construction will be halted and the California State Office of Historic Preservation will be notified. Id.

Socioeconomic impacts were studied within the 1994 EIR and reflect that completion of the proposed electrical transmission line project would allow growth in the region and enhance the social and economic characteristics of the Shasta Lake, California, area. (EA, Att. 6.0 at 42-43.) The 1994 EIR concludes that "[p]robably the most significant impact of the proposed construction would be the positive impact that a more adequate and reliable energy supply would have on the lifestyle and livelihood of the City's consumers." (EA, Att. 6.0 at 43.) Nothing in the EA or the 1994 EIR suggests that land values will diminish as claimed by appellant above.

In gathering the facts and developing the conclusions required to provide a complete and accurate EA, BLM sought the comments of the public, including appellant. The FONSI, which resulted from the EA, determined that, "[b]ased on the analysis of potential environmental consequences and mitigation measures contained in the attached environmental assessment, and based on my decision to adopt those mitigation measures, I have determined that impacts are not expected to be significant and an environmental impact statement is not required." (EA at 23.)

As noted above, appellant, upon receipt of the July 16, 1998, DR/FONSI, filed a Notice of Appeal. Appellant's concerns, described above, were adequately addressed in the EA and its attachments. Comments were solicited and received from the public. In fact, appellant and other members of the public were provided additional time to comment on the draft EA, until June 29, 1998. Reasonable alternatives were considered and the proposed alternative was found to clearly be the most supportable.

Appellant's claim that the ROW for the third line is a "Federalized" action requiring an EIS is unconvincing, and, for the reasons stated in BLM's Answer, we conclude that the City's request for a ROW over a short span of Federal property to meet its present and future energy needs does not require an integrated EIS in which the total impacts of the Knauf Project are analyzed. Appellant's other arguments are without merit.

We have noted in the past that professional disagreement by non-Federal commentators with the findings and conclusions reached by the Federal personnel charged with responsibility for the accomplishment of an environmental review is insufficient to discredit the effort. Sierra Club, 80 IBLA 251, 266 (1984).

[1] A BLM decision exercising the discretion described above will be affirmed on appeal where the record demonstrates that it is based upon a reasoned analysis of all relevant factors, was made with due regard for the public interest, and sufficient reasons for disturbing the decision are not shown. Daryl Richardson, 125 IBLA 132, 134 (1993); Coy Brown, 115 IBLA 347, 356 (1990). That is the case here. The fact that appellant would have preferred that no ROW grant issue does not establish error in the Area Manager's July 16, 1998, DR/FONSI and approval of the ROW. Therefore, we consider BLM's issuance of the DR/FONSI under review to have been proper.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the DR/FONSI appealed from is affirmed.

James P. Terry
Administrative Judge

I concur:

Bruce R. Harris
Deputy Chief Administrative Judge